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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JEHAN ZEB MIR, Plaintiff and Appellant, v. IUNGERICH & SPACKMAN, ET AL., Defendants and Respondents.	B167530 (Los Angeles County Super. Ct. No. BC212361)

APPEAL from a judgment of the Superior Court of Los Angeles County, Morris B. Jones, Judge. Affirmed and remanded.

Law Offices of Joseph R. Zamora and Joseph R. Zamora for Plaintiff and Appellant.

Greines, Martin, Stein & Richland and Kent L. Richland and Sandra J. Smith for Defendants and Respondents.

Jehan Zeb Mir, M.D., the plaintiff and appellant (Mir), sued his former attorneys for legal malpractice, and the attorneys counter-claimed for unpaid fees. Working with a mediator, the parties signed a settlement agreement which Mir refused to honor. The attorneys, who are the respondents herein, then sought enforcement of the settlement under Code of Civil Procedure section 664.6.[1] The trial court granted the motion and enforced the settlement according to its terms, which called for dismissal of Mir's complaint and a bench trial of the attorneys' counter-complaint with limited affirmative defenses. Mir appeals from a judgment for the attorneys on the cross-complaint, arguing that the section 664.6 motion was improperly granted.

Because the settlement was a valid contract contained in a writing signed by all required parties, the motion was properly granted. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 1992, Mir retained Russell Iungerich, A Law Corporation ("the Law Corporation"),[2] to represent him in a lawsuit against a hospital.[3] The attorneys who worked on Mir's case were Russell Iungerich, the Law Corporation's president and sole shareholder, Donald Serafano, and Paul Spackman. Following a directed verdict in the

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[1] Unless otherwise stated, all statutory references are to the Code of Civil Procedure.

[2] Pursuant to a post-trial ex parte application, the corporate name of "Iungerich & Spackman, A Professional Law Corporation," was substituted in place of "Russell Iungerich, A Professional Law Corporation" on February 10, 2003. To avoid confusion, we refer to the corporation as "The Law Corporation" throughout this opinion.

[3] The terms of that retention agreed to by Mir and the Law Corporation were set forth in a written engagement letter dated December 19, 1992. Mir does not dispute the terms of this retention agreement or question its validity in this appeal.

hospital's favor, Mir discharged the Law Corporation without paying the agreed fee, then sued it, along with Iungerich, Serafano, and Spackman, for malpractice. The Law Corporation and the attorney defendants cross-complained for breach of contract to recover unpaid legal fees and costs expended on Mir's behalf. The operative complaint in this action is the first amended complaint which was filed on January 6, 2000.

The parties agreed to submit the case to mediation and attended a voluntary settlement conference with a professional mediator on June 28, 2001. At the close of the conference, Mir and Iungerich signed a hand-written document drafted by Mir's counsel entitled "Settlement Terms"[4] in which Mir agreed to accept $45,000 (to be paid by the Law Corporation's insurer) as a full settlement of his claim and promised to dismiss with prejudice his malpractice claim against all the defendants. The parties agreed that the cross-complaint would proceed to trial and that both parties would waive the right to jury

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[4] The agreement, entitled "Settlement Terms" provided in full: "'1. The insurance carrier for Russell Iungerich, a Law Corporation, shall pay Jehan Zeb Mir the sum of $45,000. [¶] 2. Jehan Zeb Mir shall dismiss his claims against Russell Iungerich, an individual, Paul Spackman, an individual and Donald Serafano, an individual with prejudice -- with no monies being paid on their behalf under the settlement. [¶] 3. The First Amended complaint in Case No. BC 212 36[1] shall be dismissed with prejudice. [¶] 4. The cross-complaint by Russell Iungerich, a Law Corporation shall proceed. Jehan Zeb Mir and Russell Iungerich, a Law Corporation each agree that the right to trial by jury shall be waived. [¶] 5. Jehan Zeb Mir agrees that he is barred from raising any defense to the cross-complaint for fees on the grounds that Russell Iungerich, a Law Corporation and any of the attorneys affiliated with that Law Corporation committed malpractice and that Jehan Zeb Mir's affirmative defenses shall be limited to those based on contract. Counsel will prepare and sign a stipulation and Proposed Order regarding the affirmative defenses Jehan Zeb Mir can raise in defense of the cross-complaint for fees. [¶] 5. There is no admission of liability. [¶] 6. The terms of the settlement shall be confidential. [¶] 7. The parties will execute CC § 1542 waivers. [¶] 8. There will be releases signed relating to claims of legal malpractice. [¶] 9. A formal settlement agreement and General Release shall be prepared and signed.'"

trial. Mir also agreed to be barred from raising malpractice as a defense to the cross-complaint and to be limited to affirmative defenses based on contract. Finally, the agreement called for the subsequent drafting and signing of a formal settlement agreement and general release.

On July 10, 2001, counsel for the Law Corporation sent Mir a draft settlement agreement and general release along with a proposed court order and stipulations. The July 10 document reiterated the terms of the June 28 document. With regard to the still-pending cross-complaint, it stated: "Mir and Law Corporation expressly agree that, notwithstanding the dismissal of the First Amended Complaint in the Action, Law Corporation shall continue to prosecute the cross-complaint and Mir is precluded from raising any defense to the Cross-Complaint, by way of affirmative defense, offset, set off, or otherwise, that Mir does not owe all or any portion of the attorneys' fees and costs sought by way of that Cross-Complaint based on any claimed legal malpractice or breach of duty encompassed by the subject matter of the First Amended Complaint and that Mir is limited to raising only defenses arising under contract law to any of the claims raised in the Cross-Complaint."

Through his counsel, Mir replied that the bulk of the draft agreement was in order but that the "only problem" was that Mir should not be precluded from asserting defenses already pleaded in his answer to the cross-complaint.[5] Mir also requested renegotiation of the jury trial waiver. The Law Corporation insisted that the terms of the June 28

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[5] In addition to defenses based on contract principles, Mir had also pleaded waiver, laches, and unclean hands, among other defenses.

agreement were that "Mir's affirmative defenses shall be limited to those based on contract" but nevertheless agreed to Mir's requested modification and prepared a new draft agreement accordingly. On the question of jury trial, the Law Corporation rejected Mir's renegotiation request.

The Law Corporation, Iungerich, and his associates waited six weeks for Mir to sign the draft agreement and dismiss his claims against the defendants as agreed. When Mir failed to do so, the defendants filed a motion under section 664.6 to enforce the June 28 agreement on the grounds that "parties to pending litigation have signed a written document, agreeing to settle a matter."

At a September 19, 2001 hearing, Mir contested the motion, arguing that the June 28 agreement was void for lack of mutual consent because he never intended the June 28 agreement to be binding. In response, the defendants presented evidence that Mir was an experienced litigant who could not have failed to understand the effect of the settlement agreement. Specifically, Mir had been a party to 44 superior court lawsuits, 27 times in pro per. The court discounted Mir's statements that he viewed the agreement as tentative and non-binding, stating that it did not "believe that you signed this without recognizing that it was a binding agreement." Accordingly, the court granted the motion as to all moving parties and enforced the agreement, ordering dismissal of the operative complaint with prejudice and a bench trial on the cross complaint.

On January 27 and 28, 2003, a bench trial was held solely on the cross-complaint. The parties had completed a status conference questionnaire in which Mir had expressly waived the right to a jury trial. The judge held Mir to the terms of the settlement

agreement and prevented him from introducing evidence concerning possible malpractice by the Law Corporation in the handling of the underlying litigation.

The court found for the Law Corporation. After granting the Law Corporation's post-trial motions in the course of contested hearings during February and March, 2003, the court awarded the Law Corporation a total judgment of $100,897.06, including interest and attorneys' fees.

Mir timely filed his notice of appeal on May 16, 2003. On June 4, 2003, we stayed the proceedings and issued a notice to the parties observing that Mir had previously been adjudicated a vexatious litigant and ordering Mir, who at the time was acting in pro per, to show that his appeal had merit and was not taken for purposes of harassment or delay under section 391.7, subdivision (b). After receiving responses from the parties, we lifted the stay on June 4, 2003. In the interim, Mir had retained new counsel, and section 391.7, which prohibits a vexatious litigant from "filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed," no longer applied. We also ordered Mir to obtain an appealable order in the trial court. Mir did so, providing this court with the trial court's certified order granting the motion to enforce settlement and dismissing Mir's complaint.

CONTENTIONS OF THE PARTIES

Mir appeals both from the judgment on the cross-complaint and the order of dismissal of his complaint. Mir contends that the results were incorrect on both counts because the trial court erred in granting the Law Corporation's section 664.6 motion. As

a result of the ruling, it is argued, Mir was prejudiced in that he was precluded from introducing evidence and conducting discovery into matters relating to malpractice and from having the right to a jury trial in his defense against the cross-complaint. Therefore, the sole issue we need to consider was whether the motion to enforce settlement was properly granted. Mir presents two theories as to why the trial court erred. First, under basic contract principles, the settlement agreement was ineffective for lack of mutual consent. Second, the settlement agreement did not meet the requirements of section 664.6 because it was not signed by the required parties.

The Law Corporation disputes Mir's arguments and contends that the settlement agreement was a valid contract contained in a writing signed by the parties that met the requirements of section 664.6. The Law Corporation also contends that Mir has forfeited his right to raise the issue of the signatures' validity by his failure to object below and requests that we exercise our discretion and disregard this contention.[6]

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[6] Losing the right to assert on appeal an objection that could have been but was not raised at trial is referred to as "waiver" in the parties' briefs and is commonly used for that meaning elsewhere. However, the Supreme Court has pointed out that the correct term is "forfeiture." The difference between the two concepts is that forfeiture involves loss of a right by failure to preserve it through timely assertion, whereas waiver is the "'intentional relinquishment or abandonment of a known right.'" (*In re S.B.* (2004) 32 Cal.4th 1287, 1393, fn. 2, quoting *People v. Simon* (2001) 25 Cal.4th 1082, 1097, fn. 9.).

DISCUSSION

1. *A Motion To Enforce Settlement Is Properly Granted If The Settlement Is A Valid Contract Embodied In A "Writing Signed By The Parties."*

Section 664.6 provides in relevant part: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court [. . .], for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." In effect, this section establishes "a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstanding are met."[7] (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585.) However, not all voluntary settlement agreements qualify for this motion procedure. To ensure that a settlement agreement is the product of the parties' mature reflection and deliberate assent, the purported settlement must satisfy two requirements. First, there must be valid contract formation (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809); and second, there must be a "writing signed by the parties" that contains the material terms. (*Ibid.*) In this case, Mir argues that neither the first nor the second requirement has been met.

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[7] Prior to the enactment of section 664.6, the primary means of enforcing an out of court settlement -- still available today in cases where the facts would not support a section 664.6 motion -- were to file a new action, either for contract damages or for specific performance, or to amend the pleadings in an ongoing action and seek summary judgment based on the newly pleaded contract. (*See Weddington, supra,* 60 Cal.App.4th at p. 809; *see also Robertson v. Chen* (1996) 44 Cal.App.4th 1290, 1293.)

2. *Standard of Review*

Mir's two theories of the case require examination under two different standards of review. Mir's first theory requires a factual inquiry: was the settlement agreement a contract entered into with the mutual consent of the parties? As in other contexts, a trial court's factual findings pursuant to a section 664.6 motion to enforce settlement are subject to review for substantial evidence. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911; *Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162.) The existence of mutual consent is a factual matter. (*Alexander v. Codemasters Group, Ltd.* (2002) 104 Cal.App.4th 129, 143.) If the evidence is sufficient to support the trial court's finding that there was mutual consent, we must affirm.

Mir's argument that the settlement agreement did not meet section 664.6's "signatures" requirement raises both a factual question and a legal question. The factual question is simply: who were the parties to the agreement? The legal question is: as between those parties, did the agreement meet the requirements of section 664.6? The factual finding stands if it is supported by substantial evidence. (*Williams, supra,* 55 Cal.App.4th at p. 1162.) We review the trial court's application of the law to the facts de novo for errors of law. (*Sully-Miller Contracting Co. v. Gladson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 35.)

3. *The Settlement Agreement Was A Valid Contract Entered Into With Mutual Consent.*

Summary enforcement of a settlement under section 664.6 may only be invoked if the writing is enforceable as a contract between the parties. (*Sully-Miller, supra*, 103

Cal.App.4th at pp. 35-36.) "A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. [Citation.]" (*Ibid; Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988.) "If no contract formation has occurred, there is no settlement agreement to enforce pursuant to section 664.6 or otherwise." (*Weddington, supra,* 60 Cal.App.4th at p. 797.)

Mutual consent of the parties is an essential element of contract formation. (Civ. Code, §§ 1550, 1565.) Consent is only mutual if "the parties all agree upon the same thing in the same sense." (Civ. Code, § 1580.) "The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe." [Citation.] (*T.M. Cobb, Co. v. Superior Court* (1984) 36 Cal.3d 273, 282.) In other words, courts look to "the reasonable meaning of [the parties'] words and acts, and not their unexpressed intentions or understandings." (*Alexander v. Codemasters Group, Ltd.*, *supra*, 104 Cal.App.4th at p. 141.) This "fundamental rule" has been the law in California for many decades. (See 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 119, p. 144, collecting numerous citations to the rule.) Nevertheless, though Mir does not dispute that he objectively signified his assent to the June 28 agreement by signing it, he claims his assent was not genuine because he subjectively took the document to be something less than binding.[8] However, the only relevant question is whether substantial evidence

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[8] Even if Mir's subjective understanding of the document were relevant to the inquiry here, he would still have to prove that, subjectively, he intended not to be bound by the June 28 agreement. Based on the circumstances of this case, primarily evidence of Mir's legal experience and savvy, the trial court, acting as fact-finder, disbelieved Mir's

supports the trial court's implied finding that there was mutual consent to the agreement under the objective standard.

In this case, the document drafted by Mir's attorney speaks for itself. Mir does not dispute the document's authenticity or claim that his signature was coerced or otherwise wrongfully obtained. In the absence of fraud, overreaching, or excusable neglect, a person who signs a written agreement is bound by it and is deemed to have consented to all of its terms. (*Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163.) Because the document contained in the record supports the factual finding that there was a valid contract entered into with the mutual consent of the parties, the trial court acted correctly in enforcing it according to its terms.

4. *Mir Forfeited The Right To Challenge The Sufficiency Of The Signatures By Failing To Object Below.*

At trial, Mir's sole objection to the motion to enforce settlement was a substantive argument based on lack of mutual consent.[9] For the first time, Mir contends in this court that the signatures on the July 28 settlement agreement were ineffective for section 664.6

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testimony, stating, "I do not believe that you signed this without recognizing that it was a binding agreement." "[I]t is the exclusive province of the trial judge or jury to determine the credibility and the truth or falsity of the facts upon which a determination depends." (*People v. Maury* (2003) 30 Cal.4th 342, 403; *Bradley v. Perrodin* (2003) 106 Cal.App.4th 1153, 1166.) We would therefore defer to the fact-finder on this credibility question. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal. App.4th 959, 968.)

[9] In his reply brief, Mir points to the fact that he raised a standing argument which implicated the sufficiency of the "signatures" issue in the context of his reply to the Law Corporation's opposition to certain motions to compel discovery several months after the section 664.6 motion was granted. However, as the record contains no appealable order on this point, it appears that the issue was never properly raised at trial and that the trial court never ruled on it.

purposes. Specifically, he argues that Iungerich signed only on his own behalf and not as an officer of the Law Corporation. Thus, the Law Corporation did not "sign" the agreement. Ordinarily, an appellate court will not consider a challenge to a ruling that could have been but was not raised in the trial court. (*Doers v. Golden Gate Bridge, etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1; *People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) The purpose of this rule is to ensure fairness and judicial efficiency by encouraging parties to bring errors to the attention of the trial court, so that they may be corrected. (*Saunders, supra,* 5 Cal.4th at p. 590.) However, the Supreme Court has recently rejected automatic application of the forfeiture doctrine. (*In re S.B., supra,* 32 Cal.4th at p. 1293.) When a party forfeits its right to object to a trial court's order, the Court of Appeal has *discretion* to hear the objection on appeal. (*Ibid.*) But "the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*Ibid.*)

In *Canaan v. Abdelnour* (1985) 40 Cal.3d 703, the Supreme Court excused an apparent forfeiture because it concerned an important aspect of constitutional law. (*Id.* at p. 722, fn. 17, disapproved on another point in *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 183..) In *Bayside Timber Co. v. Board of Supervisors* (1971) 20 Cal.App.3d 1, the court reviewed the rationales in cases supporting the exercise of appellate court discretion to consider an issue raised for the first time on appeal, and noted that the courts are more inclined to consider "tardily raised legal issues" in cases involving the public interest or public policy. (*Id.* at pp. 4-5, see also cases cited therein.)

Mir's appeal does not appear to involve a novel or pressing legal issue. The parties do not dispute the rule that in order for enforcement of settlement to be granted

under section 664.6, the purported settlement must be contained in a writing signed by the parties that states the material terms. Nor do the cases or statutory law, discussed below, cast any doubt on the "signatures" requirement.

Parties are also sometimes allowed to advance new theories on appeal when the issue posed is purely a question of law based on undisputed facts. (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 654, fn. 3, disapproved on another point in *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 774; *Ward v. Taggart* (1959) 51 Cal.2d 736, 742 ["[I]t is settled that a change in theory is permitted on appeal when 'a question of law only is presented on the facts appearing in the record.' [Citation.]"].) Here, the issue is largely factual, pertaining to the identity of the parties to the June 28 agreement, and was never litigated below. In fairness to the trial court and to the defendants,[10] we do not exercise our discretion to excuse Mir's forfeiture.

5. *The Settlement Agreement Is Enforceable Under Section 664.6*

In any event, resolution of this matter on the merits would yield the same result as resolution under the forfeiture doctrine because the settlement agreement did meet the requirements of section 664.6.

A written settlement agreement is only enforceable under section 664.6 if it is signed by *all of the parties to the agreement.* (*Sully Miller, supra,* 103 Cal.App.4th at p 37; *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 304-306.) For section 664.6 purposes, the term "party" refers to "the specific person or entity by or

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[10] Had Mir raised in the trial court a question as to the capacity in which Iungerich signed the settlement agreement, Iungerich could have presented additional evidence on the issue.

against whom legal proceedings are brought." (*Levy, supra,* 10 Cal.4th at p. 585.) This means that enforcement of settlement under 664.6 is available when the writing is signed by the parties seeking to enforce the agreement and against whom the agreement is sought to be enforced. (*Harris, supra,* 74 Cal.App.4th at p. 305.) The signature requirement does not extend to *all* the parties involved in an action; only the signatures of the parties involved in contesting the motion are required. (*Id.* at p. 306 ["[O]ur holding does not interpret section 664.6 to require the signature of *all* of the parties in the action. Certainly we can conceive of a multiple-party litigation where some, though not all of the parties enter into a settlement agreement. The statutory purpose of expediting settlement to judgment would not be furthered if it was unavailable to those litigants on both sides of a multiparty action who choose to enter into a settlement agreement in the manner contemplated by the statute. We simply hold the section's requirement of a 'writing signed by the parties' must be read to apply to all parties bringing the section 664.6 motion and against whom the motion is directed."].)

In this case, the evidence amply supports the finding that the two parties to the June 28, 2001 settlement agreement were Mir and the Law Corporation, with Iungerich signing for the Law Corporation as president. The agreement recites that Mir shall receive $45,000 dollars from the Law Corporation's insurer and no payment from Iungerich, Spackman, or Serafano as individuals. Thus, Mir and the Law Corporation were the only parties providing any consideration for the agreement. In other words, they were the only parties to the agreement. The trial court impliedly found as much, stating "The contract sets forth the obligations of the parties, and both parties signed this."

As stated, section 664.6 requires the signature of "the specific person *or entity* by or against whom legal proceedings are brought." (*Levy, supra,* 10 Cal.4th at p. 583, emphasis added.) Thus, the section 664.6 signature requirement applies both to individuals and to corporate entities. (*Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1118.) As president and sole share holder, Iungerich had the authority to contract for the Law Corporation. Indeed, he was the only person who could sign a binding agreement on the Law Corporation's behalf. "'[C]orporations necessarily act through their agents.' [Citation.]" (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 782.) Under Corporations Code section 313, the signature of an agent is binding on the corporation, with or without prior authorization, if the agent is both (1) the president, the chairman of the board, or any vice-president; and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer. (*Id.* at p. 784; Corp. Code, § 313.) As long as the agent falls into both of the required categories, the law does not require the agent to identify his or her post. (*Snukal, supra,* 23 Cal.4th at p. 786.) The record here reflects that as the president and sole shareholder of the Law Corporation, Iungerich was the *only* person who could sign a binding agreement on its behalf and the trial court impliedly so found. Mir offered no evidence to the contrary. Had Mir raised the capacity issue in the trial court, Iungerich could have produced evidence of this status in direct opposition to Mir's objection (see fn. 9, *ante*). We believe these circumstances are sufficient to justify application of the provisions of Corporations Code section 313 in support of the trial court's determination.

The remaining question is whether Iungerich's signature on the Law Corporation's behalf was effective to form a contract that affected the interests of all the defendants. Mir asserts that since only Iungerich's signature appeared on the settlement agreement, legally the other moving parties could not avail themselves of the summary procedure. We disagree. As stated, there were only two parties to the settlement agreement: Mir and the Law Corporation. The interests of Iungerich, Spackman, and Serafano, as individuals, were also affected by the agreement, but this does not make them parties. Instead, they were third-party beneficiaries, that is recipients of the benefit Mir promised the Law Corporation he would provide.[11]

Although section 664.6 may not be asserted by or against a party who has had a settlement agreement signed on their behalf by a representative (*Williams v. Saunders, supra,* 55 Cal.App.4th 1158 [agreement signed by codefendant spouse not enforceable under section 664.6]; *Levy, supra,* 74 Cal.App.4th 299 [agreement signed by attorney and codefendant spouse not enforceable under section 664.6]; *Cortez v. Kenneally* (1996) 44 Cal.App.4th 523 [agreement signed by attorney and codefendant spouse not enforceable under section 664.6]; *Cf. Robertson v. Chen* (1996) 44 Cal.App.4th 1290 [dicta indicating that in an action where the insurer provides defense and indemnity without a reservation of rights, the signature of the insurer's counsel on behalf of the defendant insured would be enforceable under section 664.6 if the section's other

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[11] We do not need to reach the issue of whether Iungerich, Spackman, and Serafano would have had standing to enforce the settlement agreement as individuals if the Law Corporation had not sought enforcement. It is enough for the purposes of this case to establish that, though they had a clear stake in the outcome of the case, they themselves were not contracting parties.

requirements were satisfied]), there is no requirement that the settlement be signed by every party who directly or indirectly benefits from the settlement that is sought to be enforced. Put another way, a settlement agreement that is sought to be enforced under section 646.6 need not be signed by third party beneficiaries.

Dismissal of the malpractice claim was a term of Mir's contract with the Law Corporation. That the Law Corporation bargained to confer a benefit on a third party does not diminish its right to seek enforcement of this or any other term through all procedural devices available to it. Mir would have us expand the signatures requirement to the point that "all parties seeking to gain or having something to lose under the agreement must sign it for it to be enforceable as to any of them." We decline, however, to establish such a rule. To do so would mean requiring the signatures of even secondarily interested persons or entities. This would be unnecessary, cumbersome, and contrary to the efficiency goals of section 664.6 and would not, in any event, advance the legislative goal of insuring that any enforceable settlement agreement was the product of the signatory parties' mature reflection and deliberate assent.

6. *The Law Corporation Is Entitled to Recover Its Attorney's Fees Incurred On Appeal*

The Law Corporation argues that in light of the attorney's fee clause set out in the engagement letter of December 19, 1992 (see fn. 3, *ante*), it is entitled to recover its attorney's fees incurred in this appeal. That clause provided, "**Attorney's Fees and Costs in Action on Agreement.** The prevailing party in any action or proceeding to enforce any provision of this agreement will be awarded reasonable attorney's fees and

costs incurred in the action or proceeding or in efforts to negotiate the matter. This provision will apply to fee arbitration proceedings."

The law applicable to the Law Corporation's fee claim is well settled. "When a party obtains a simple, unqualified victory by completely prevailing on or defeating all contract claims in the action and the contract contains a provision for attorney fees, [Civil Code] section 1717 entitles the successful party to recover reasonable attorney fees incurred in prosecution or defense of those claims." (*Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109.) This includes attorneys' fees incurred on appeal. (*Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139, 1153, disapproved on other grounds in *Snukal v. Flightways Manufacturing, Inc., supra,* 23 Cal.4th at p. 775, fn. 6 and in *Gavaldon v. Daimler Chrysler Corp.* (2004) 32 Cal.4th 1246, 1261; see *People ex rel. Cooper v. Mitchell Brothers' Santa Ana Theater* (1985) 165 Cal.App.3d 378, 387 ["Where attorney's fees are authorized by statute they are authorized on appeal as well as in the trial court"].)

Thus, if the Law Corporation is the prevailing party on the contractual claim it asserted in its cross-complaint (i.e., the breach of contract action based on Mir's alleged failure to perform his obligations under the retention agreement of December 19, 1992), then it is entitled to recover the attorney's fees incurred to enforce that agreement. Indeed, the trial court has already awarded the Law Corporation fees as part of its judgment. Our affirmance of that judgment necessarily sustains the trial court's determination that the Law Corporation was the prevailing party in the trial court.[12] If it

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[12] Mir does not contend otherwise in this appeal.

is also the prevailing party on the appeal, then it is also entitled to recover its attorneys' fees incurred on appeal. (See *People ex rel. Cooper v. Mitchell Brothers' Santa Ana Theater, supra,* 165 Cal.App.3d at pp. 387-388 [court of appeal may determine entitlement to attorneys' fees incurred on appeal]; *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1393 [determining entitlement to fees incurred on appeal].)

Mir objects to the Law Corporation's fee claim not on the ground that it was not a "prevailing party," but rather because the appeal was over the trial court's order of September 19, 2001, granting the Law Corporation's motion to enforce the settlement agreement, not the Law Corporation's breach of contract claim. This argument, however, overlooks the fact that Mir appealed from the judgment of March 19, 2003, which awarded the Law Corporation damages on its cross-complaint for breach of contract. That he only chose to attack the order enforcing the settlement does not diminish the conclusion that the Law Corporation was clearly the "prevailing party" on appeal with respect to its breach of contract claim. Thus, under the terms of the engagement letter, it is entitled to an award of fees for those legal services reasonably necessary to protecting that judgment.

Mir's position is actually an argument for some kind of allocation between those legal services attributable to protecting the contract award and those related to other issues. This is a matter which should be initially examined by the trial court on remand at which time the Law Corporation may make an appropriate application for fees incurred

on appeal. We decide only that the Law Corporation was the prevailing party on appeal on its breach of contract claim and is entitled to some award of fees. Whether in light of all the circumstances, any allocation is reasonably possible or appropriate and, if so, in what manner is a matter we leave entirely to the initial consideration of the trial court.

CONCLUSION

Substantial evidence supports the trial court's findings that there was a settlement agreement between Mir and the Law Corporation and that the settlement agreement was enforceable as a contract entered into with mutual consent. The trial court also correctly found that the settlement met the signature requirements of section 664.6.

DISPOSITION

The judgment is affirmed. The matter is remanded for further proceedings consistent with the views expressed herein. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CROSKEY, J.

We concur:

KLEIN, P.J.

ALDRICH, J.